

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-1908-MSW-E TCEQ ID: RN104154562 CASE NO.: 27278
RESPONDENT NAME: RICARDO AGUERO DBA AGUERO'S TRUCKING

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Two miles east of the intersection of Bob Bullock and Highway 359, Laredo, Webb County</p> <p>TYPE OF OPERATION: Solid waste transportation business</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 29, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492 TCEQ Regional Contact: Ms. Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052 Respondent: Mr. Ricardo Aguero, Owner, Aguero's Trucking, P. O. Box 430057, Laredo, Texas 78043 Respondent's Attorney: Mr. Ernesto Davila, Jr. Law Offices of Ernesto Davila, Jr., P. O. Box 662, Laredo, Texas 78042-0662</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 9, 2005</p> <p>Date of NOE Relating to this Case: May 31, 2005</p> <p>Background Facts: The EDPRP was filed on October 2, 2006. The Respondent filed an answer and the case was referred to SOAH. The Respondent signed an agreed order on September 23, 2008.</p> <p>Current Compliance Status: The Respondent is no longer in business. The waste was removed from the site by the landowners in response to a companion enforcement action.</p> <p>MSW: Failed to ensure that all solid waste collected and transported is disposed of only in authorized facilities. Specifically, the Respondent hauled approximately 1,726 cubic yards of municipal solid waste including brush, concrete with rebar, lumber, plastic, tires, construction debris, and shingles to an unauthorized facility [30 TEX. ADMIN. CODE §§ 330.15(c) and 330.103(b) (formally §§ 330.5(c) and 330.32(b))].</p>	<p>Total Assessed: \$3,500</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$0</p> <p>The Respondent has paid the administrative penalty in full.</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action(s) Taken: The waste has been removed from the site.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	15-Aug-2005	Screening	26-Oct-2005	EPA Due	N/A
	PCW	03-Oct-2005				

RESPONDENT/FACILITY INFORMATION			
Respondent	Ricardo Aguero dba Agueros Trucking		
Reg. Ent. Ref. No.	RN104154562		
Facility/Site Region	16-Laredo	Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	27278	No. of Violations	1
Docket No.	2005-1908-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Edward R. Moderow
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$2,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History -10% Enhancement Subtotals 2, 3, & 7 **-\$250**

Notes: A reduction is recommended for a High Performer Person Classification.

Culpability 0% Enhancement Subtotal 4 **\$0**

Notes: Does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: The Respondent no longer owns a waste transportation operation.

Economic Benefit 50% Enhancement* Subtotal 6 **\$1,250**

Total EB Amounts	\$41,214
Approx. Cost of Compliance	\$11,219

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$3,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount **\$3,500**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$3,500**

DEFERRAL 0% Reduction Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended because this is not an expedited case.

PAYABLE PENALTY **\$3,500**

Screening Date 26-Oct-2005

Docket No. 2005-1908-MSW-E

PCW

Respondent Ricardo Aguero dba Agueros Trucking

Policy Revision 2 (September 2002)

Case ID No. 27278

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104154562

Media [Statute] Municipal Solid Waste

Enf. Coordinator Edward R. Moderow

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Other	Please Enter Yes or No		
	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

A reduction is recommended for a High Performer Person Classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date 26-Oct-2005

Docket No. 2005-1908-MSW-E

PCW

Respondent Ricardo Aguero dba Agueros Trucking

Policy Revision 2 (September 2002)

Case ID No. 27278

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104154562

Media [Statute] Municipal Solid Waste

Enf. Coordinator Edward R. Moderow

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code §§ 330.32(b) and 330.5(c)

Secondary Rule Cite(s)

Violation Description

Failed to ensure that all solid waste collected and transported is disposed of only at authorized facilities. Specifically, the respondent hauled approximately 1,726 cubic yards of municipal solid waste including brush, concrete with rebar, lumber, plastic, tires, construction debris and shingles to an unauthorized site located two miles east of the intersection of Bob Bullock and Highway 359 East, Laredo, Webb County.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			Percent
OR	Release	Major	Moderate	Minor	
	Actual		X		
	Potential				

Percent 25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent

Matrix Notes

Human health or the environment has been exposed to a significant amount of pollutants which do not exceed protective levels.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$2,500

One single event is recommended based on the date of investigation (5/09/2005).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$41,214

Violation Final Penalty Total \$3,500

This violation Final Assessed Penalty (adjusted for limits) \$3,500

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Economic Benefit Worksheet**Respondent** Ricardo Agüero dba Agueros Trucking**Case ID No.** 27278**Reg. Ent. Reference No.** RN104154562**Media [Statute]** Municipal Solid Waste**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal	\$11,219	01-Jan-2001	01-Jul-2004	3.5	\$1,963	\$39,251	\$41,214
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The Respondent avoided the tipping fees associated with dumping municipal solid waste at an authorized landfill. The disposal cost is based on the amount disposed of, multiplied by \$6.50/cubic yard. The date range is based on the time period of unauthorized waste disposal.

Approx. Cost of Compliance \$11,219

TOTAL \$41,214

Compliance History

Customer/Respondent/Owner-Operator: CN601026552 Ricardo Aguero Classification: HIGH Rating: 0.000
Regulated Entity: RN104154562 AGUEROS TRUCKING Classification: HIGH Site Rating: 0.00
ID Number(s): N/A
Location: 2 MI EAST OF INTERSECTION OF BOB BULLOCK AND HWY 359 EAST, LAREDO, WEBB COUNTY Rating Date: 9/1/05 Repeat Violator: NO
TCEQ Region: REGION 16 - LAREDO
Date Compliance History Prepared: November 03, 2005
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 01, 2000 to November 01, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Edward R. Moderow Phone: (512) 239-2680

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Comments: The Regulated Entity ceased waste hauling operations September 2003

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 03/10/2004 (262373)

2 05/31/2005 (380607)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
RICARDO AGUERO DBA
AGUERO'S TRUCKING,
RN104154562**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2005-1908-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ricardo Aguero dba Aguero's Trucking ("Mr. Aguero") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Aguero represented by Mr. Ernesto Davila, Jr., of the Law Offices of Ernesto Davila, Jr., appear before the Commission and together stipulate that:

1. At the time of the violations, Mr. Aguero owned and operated a solid waste transportation business which transported and disposed of municipal solid waste at an unauthorized landfill located two miles east of the intersection of Bob Bullock and Highway 359, Laredo, Webb County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission and Mr. Aguero agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Aguero is subject to the Commission's jurisdiction.
4. Mr. Aguero received notice of the violations alleged in Section II ("Allegations") on or about June 6, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Aguero of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of three thousand five hundred dollars (\$3,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Aguero has paid three thousand five hundred dollars (\$3,500.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Aguero have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Aguero has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Mr. Aguero is alleged to have violated 30 TEX. ADMIN. CODE §§ 330.5(c)¹ and 330.32(b)² by failing to ensure that all solid waste collected and transported is disposed of only in authorized facilities. Specifically, Mr. Aguero hauled approximately 1,726 cubic yards of municipal solid waste

¹ Effective March 27, 2006, 30 TEX. ADMIN. CODE § 330.5(c) was recodified as 30 TEX. ADMIN. CODE § 330.15(c).

² Effective March 27, 2006, 30 TEX. ADMIN. CODE § 330.32(b) was recodified as 30 TEX. ADMIN. CODE § 330.103(b).

including brush, concrete with rebar, lumber, plastic, tires, construction debris, and shingles to an unauthorized facility located two miles east of the intersection of Bob Bullock and Highway 359, Laredo, Webb County, as documented on May 9, 2005.

III. DENIALS

Mr. Aguero generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Aguero pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Aguero's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Ricardo Aguero dba Aguero's Trucking, Docket No. 2005-1908-MSW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Aguero. Mr. Aguero is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Aguero in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

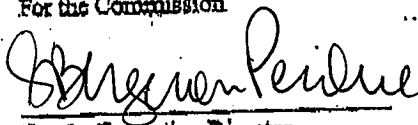
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Aguero, or three days after the date on which the Commission mails notice of the Order to Mr. Aguero, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Ricardo Aguero dba Aguero's Trucking
DOCKET NO. 2005-1908-MSW-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

12/9/2008

Date

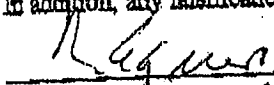
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature


RICARDO AGUERO

Name (Printed or typed)

Authorized representative of

Ricardo Aguero dba Aguero's Trucking

Date

9/23/08

Title

Owner